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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,324	12/30/2003	Fumitaka Ishiguro	251312-1010	8018

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EXAMINER

THANH, QUANG D

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/748,324	Applicant(s) ISHIGURO ET AL.	
	Examiner Quang D. Thanh	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/07 has been entered.

2. This office action is responsive to the amendment filed on 4/5/07. As directed by the amendment: claim 1 has been amended; claims 12-19 have been cancelled; and new claim 28 has been added. However, it is noted that newly submitted claim 28 is directed to a non-elected invention of species II (fig. 11) that is independent or distinct from the invention originally claimed. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 28 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Thus, claims 1-11 and 20-27 are presently pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsieh (6,969,361). Hsieh discloses a massage device (fig. 2), comprising: a driving shaft 13 (fig. 2); a driving mechanism 10 (fig. 1); a pair of therapeutic elements 30 (fig. 2) rotated by the driving shaft 13, driven by the driving mechanism, for supporting and massaging feet (fig. 11) wherein each therapeutic element comprises a pressure board 31/32 or 33/34 (fig. 2); and a bottom therapeutic member 50 (fig. 2), disposed between the pair of therapeutic elements 34/34 (fig. 2), supporting a sole of foot (fig. 11); wherein the therapeutic elements 30 are formed along the instep of a foot (fig. 11) so that the pressure board covers the instep (best seen in fig. 11) and when the pressure boards approach toward each other (best seen in fig. 9) the boards would press down on the foot and thus the instep of the foot is also pressed downward by the pressure boards; a protrusion wherein the protrusion is an airbag 35 disposed on a side of the therapeutic elements (fig. 2 and 7); wherein at least two of the therapeutic elements 33/34 are disposed along the longitudinal direction of the foot; wherein the bottom therapeutic member has a roller 20/51, having a protrusion 511/512 (fig. 7) facing the sole of a foot (fig. 11).

4. Claims 1-4, 8-11 and 23-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (6,599,261). Chen discloses a massage device (fig. 3),

comprising: a driving shaft 20; a driving mechanism 10 ; a pair of therapeutic elements 40, rotated by the driving shaft, driven by the driving mechanism (fig. 2) , for supporting and massaging feet (fig. 5-6) wherein each therapeutic element comprises a pressure board 41/42 (fig. 5); and a bottom therapeutic member 50 disposed between the pair of therapeutic elements 41/42 supporting a sole of foot (fig. 5); wherein the therapeutic elements 40 are formed along the instep of a foot (fig. 5) so that the pressure board 41/42 covers the instep (best seen in fig. 5) and when the pressure boards approach toward each other (best seen in fig. 5) the boards would press down on the foot and thus the instep of the foot is also pressed downward by the pressure boards; a protrusion 70 disposed on a side of the therapeutic elements (fig. 2 and 5); wherein at least two of the therapeutic elements 41/42 are disposed along the longitudinal direction of the foot (fig. 5); wherein the bottom therapeutic member 50 has a roller 36, having a protrusion (wheel 51 or 52 having knobs 71) facing the sole of a foot (fig. 5-6); wherein the pressure board 41/42 being formed corresponding to the foot (fig. 3); wherein the bottom therapeutic member 50 has a plurality of rollers 36 disposed along the longitudinal direction of the foot (best seen in fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Kassel et al. (7,147,611). Chen discloses the claimed invention including pressure board 41/42 being formed corresponding to the foot (fig. 3) except that it does not disclose that each therapeutic element comprising a massaging plate, and the pressure board and the massaging plate form a substantially L-shaped cross section and the pressure board is formed on an end of the massaging plate. However, Kassel discloses a massage device (fig. 3) comprising: a driving shaft 38 (fig. 3); a driving mechanism 34 ; a pair of therapeutic elements 60a/60b, rotated by the driving shaft, driven by the driving mechanism (fig. 3), wherein each therapeutic element 60a is a forked paddle comprising a pressure board 61 (fig. 3) and a massaging plate 63 (fig. 3) with the pressure board and the massaging plate forming a substantially L-shaped cross section and the pressure board 61 is formed on an end of the massaging plate 63 (best seen in fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Chen's reference, to include a forked paddle therapeutic element comprising a pressure board and a massaging plate forming a substantially L-shaped cross section, as suggested and taught by Kassel et al., for the purpose of providing a twisting and waving motion in the forked paddle therapeutic elements for applying kneading-type and rubbing-type massaging to the three sides of a body part (col. 3, lines 37-45).

Response to Arguments

6. Applicant's arguments filed 4/5/07 have been fully considered but they are not persuasive.

7. In response to applicant's argument that the references fail to teach "the instep of a foot is firmly pressed downward by the pressure boards when the pressure boards approach", it is noted that the limitation "the instep of a foot is firmly pressed downward" is a functional recitation of the intended use of the claimed invention, and as such it must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, both references Hsieh and Chen indeed teach that when the pressure boards approach toward each other, the boards would press down on the foot and thus the instep of the foot is also pressed downward by the pressure boards (see explanation above) and thus appear to comprehend this functional language.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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